

82-1163

NO. _____

Supreme Court, U.S.
FILED

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

S.E.A. TOWING CO., INC.,
Plaintiff-Petitioners

VERSUS

GREAT ATLANTIC INSURANCE COMPANY,
Defendant-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether Petitioner has been denied due process of law and his day in court by the application of a prescription period established by a contract to which Petitioner was not a party.

LIST OF PARTIES

All of the parties in the United States
Court of Appeals for the Fifth Circuit are
listed in the caption.

CORPORATE PARTY'S AFFILIATES

S.E.A. Towing Corporation, Inc. has no known corporate affiliates or other subsidiaries.

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Petitioner, S.E.A. Towing Co., Inc.
respectfully prays that a Writ of Certiorari
issue to review the Judgment and Opinion of
the United States Court of Appeals for the
5th Circuit entered October 12, 1982.

OPINIONS BELOW

The Opinion and Judgment of the Fifth Circuit Court of Appeals against Petitioners appears at Appendix B to this Petition. The Opinion and Judgment of the District Court appears at Appendix C.

JURISDICTION

The judgment of the Court below (Appendix A, infra. p. 8) was entered on October 12, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The 5th Amendment to the United States Constitution provides in relevant part:

"No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

STATEMENT OF THE CASE

On March 4, 1979, the M/V MARK DAVID, owned by Petitioner, S.E.A. Towing Co., Inc., sank in Morgan City, Louisiana. At the time, the vessel was chartered to R. J. Menard, who was obliged to maintain insurance for hull loss to the MARK DAVID. Insurance was thus provided by Great Atlantic Insurance Company. S.E.A. did not negotiate, seek, nor contract for this policy of insurance. The insurance contract was perfected between Menard and Great Atlantic.

On May 3, 1979, the charterer's representative forwarded a proof of loss claim requesting payment under the policy. Great Atlantic refused to pay. The charterer (Menard) then abandoned its claim.

On November 13, 1980, twenty months after the sinking, S.E.A. filed suit to recover under the policy for the loss.

The case was removed by the defendant to Federal Court on the basis of diversity jurisdiction. Great Atlantic then moved for summary judgment on grounds that the action was barred by a policy provision requiring that any suit to recover under the policy be commenced within one year after the date of the physical loss. The usual prescriptive period for such actions is ten (10) years (See La.CC 3544), although under limited circumstances, Louisiana law allows parties to contractually limit this time period. (See LSA-R.S. 22:629) However, S.E.A. was not a party to this contract, and never received a certificate of insurance setting forth the terms of this time limitation as required by LSA-R.S. 22:215(3)(g). The District Court granted Great Atlantic's motion for summary judgment and dismissed the complaint. The Fifth Circuit Court of Appeals affirmed this decision.

Both the District Court and the Fifth Circuit Court of Appeals applied Louisiana law to the policy in question. Louisiana law was unclear on the particular point raised by the facts of this case, so the Federal courts attempted to apply Louisiana law as the Louisiana Supreme Court would apply the law in similar circumstances. However, the interpretation imposed by the Federal courts upon the facts of this case violate the U.S. Constitution, specifically the due process clause of the Fifth Amendment. Certiorari is sought to review the unconstitutionality of this ruling.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit's application of an improper prescriptive period has denied Petitioner his day in court, and has thus denied Petitioner due process of law. The Fifth Circuit Court of Appeals has applied a

prescriptive period which is in derogation of Louisiana statutory law; the prescriptive period in question was established in a contract to which Petitioner, S.E.A. Towing, was not a party. At no time was Petitioner made aware of this unusual time limitation. Great Atlantic did not provide Petitioner with a copy of the insurance policy as required by LSA-R.S. 22:215(3)(g), settled Louisiana jurisprudence, (see Lombard v. Manchester Life Insurance Co., La. 4th Cir. No. 12147, 1981), and due process. Petitioner has thus been barred from presenting his case in court by a prescriptive period in derogation of Louisiana statutory law established by a contract to which Petitioner was not a party. A contractual provision providing for a limited time period for filing suit can only be applicable to the parties negotiating the contract, and cannot limit a third party's (in this case Petitioner's) access to a court

for a disposition of its claim. Further, Petitioner was not given fair notice of this unusual time limitation, as required by Louisiana law and due process. Petitioner has thus been denied due process of law.

CONCLUSION

The decisions below are palpably erroneous. The lower courts have misapplied Louisiana law so as to violate the requirements of due process, thus causing substantial injustice. The Petition for a Writ of Certiorari should therefore be granted.

Respectfully submitted:

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